

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOSE RAUL JUAREZ-ORCI,
Petitioner.

No. 2 CA-CR 2016-0285-PR
Filed November 23, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20121629001
The Honorable Kenneth Lee, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Jose Raul Juarez-Orci, San Luis
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Jose Juarez-Orci seeks review of the trial court's order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Juarez-Orci has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Juarez-Orci was convicted of attempted second-degree murder and five counts of aggravated assault, all perpetrated against his wife. *State v. Juarez-Orci*, 236 Ariz. 520, ¶ 1, 342 P.2d 856, 857-58 (App. 2015). He was sentenced to concurrent, presumptive prison terms, the longest of which was 10.5 years for attempted second-degree murder. *Id.* ¶ 10. On appeal, this court reversed his conviction for attempted second-degree murder and remanded the case "for further proceedings on that charge." *Id.* ¶ 24. We affirmed his remaining convictions and sentences. *Id.* After remand, the trial court granted the state's motion to dismiss the attempted murder charge.

¶3 Juarez-Orci sought post-conviction relief, arguing his trial counsel had been ineffective. He contended counsel should have filed a motion to suppress asserting his wife had no right to consent to a search of his home because she had signed a quit-claim deed for the property, and that counsel should have called witnesses to testify about his non-violent character and that his wife "was initiating contact with [him] just as much as he was initiating contact with her in the period after he had been served with [a] restraining order." The trial court summarily denied relief. This petition for review followed.

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¶4 On review, Juarez-Orci repeats his claims of ineffective assistance of counsel. But he has identified no factual or legal error made by the trial court in rejecting those claims. The court correctly concluded that Juarez-Orci would not have prevailed on a motion to suppress and that counsel's evidentiary decisions were tactical and thus could not support a claim of ineffective assistance. *See State v. Gerlaugh*, 144 Ariz. 449, 698 P.2d 694 (1985) ("The decision as to what witnesses should be called to testify on defendant's behalf is a strategic decision that will not normally support a claim of ineffective assistance of counsel."); *State v. Flores*, 195 Ariz. 199, ¶ 11, 986 P.2d 232, 236 (App. 1999) (consent to search can be based on apparent authority). No purpose would be served by restating the court's thorough and correct ruling in its entirety here; rather, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶5 We grant review but deny relief.